

15 U.S.C. § 1640(a)(1)
TILA

Gold Country Lenders v. Smith

9th Cir. # 00-36014

In Re Smith

9th Cir. # 00-36032

Bankruptcy # 697-62183-aer13

5/16/02 9th Cir. (affirming BAP-see E00-15(21)
for underlying opinion) (and affirming
bankruptcy court (Judge Radcliffe)
-underlying opinion was a letter opinion)

Published __ F.3d __
2002 WL 992496

In June 1994, Debtor borrowed \$28,000 from Creditor and executed a note and trust deed on a California property. That same day, Debtor executed a cross collateral installment note to Creditor for \$43,000 at 12% interest and, as additional security, a cross collateral trust deed on property Debtor owned in Oregon.

Debtor filed Chapter 13 in 1997. Creditor filed a claim to which Debtor objected, asserting various defenses, some of which were based on alleged Truth In Lending Act (TILA) violations.

The bankruptcy court offset Creditor's claim by \$1000 as statutory damages under 15 U.S.C. § § 1640(a)(2)(A), for violations of 15 U.S.C. §§ 1638(a)(3) & (4) (i.e. failing to conspicuously disclose and define the "finance charge" and "annual percentage rate" (designated as such) in any of the documents executed in the June, 1994 transaction). The court did not award any "actual" TILA damages.

Debtor appealed. The BAP affirmed. Debtor appealed to the 9th Circuit.

Held: Affirmed.

Only statutory damages were appropriate. Debtor failed to prove any actual damages under 15 U.S.C. § 1640(a)(1). To receive damages under that section a debtor must prove detrimental reliance. Debtor presented no evidence that she would have received a better interest rate elsewhere or foregone the loan completely.

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: GERALDINE KAY SMITH,
Debtor.

GOLD COUNTRY LENDERS,
Appellant.

v.

GERALDINE KAY SMITH,
Appellee.

No. 00-36014
BAP No.
OR-99-1543-RyKM

In re: GERALDINE KAY SMITH,
Debtor.

GERALDINE KAY SMITH,
Appellant.

v.

GOLD COUNTRY LENDERS,
Appellee.

No. 00-36032
BAP No.
OR-99-01542-
RyKM
OPINION

Appeal from the Ninth Circuit Bankruptcy Appellate Panel,
Ryan, Klein, and MacDonald, Bankruptcy Judges, Presiding

Argued and Submitted
March 6, 2002—Portland, Oregon

Filed May 16, 2002

Before: Betty Binns Fletcher, Diarmuid F. O'Scannlain, and
Marsha S. Berzon, Circuit Judges.

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IN RE SMITH

Per Curiam Opinion

COUNSEL

Howard S. Lichtig, Port Orford, Oregon, for the appellant.

Geraldine Kay Smith, Pro Se, Ashland, Oregon, for the appellee.

OPINION

PER CURIAM.

Debtor Geraldine Smith cross-appeals a decision by the Bankruptcy Appellate Panel ("BAP") denying her claim for actual damages as a result of Gold Country Lenders's violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601.

We have jurisdiction pursuant to 28 U.S.C. § 158(d), and review the decision of the BAP *de novo*. *Cool Fuel, Inc. v. Bd. of Equalization (In re Cool Fuel, Inc.)*, 210 F.3d 999, 1001 (9th Cir. 2000). For the reasons assigned, we affirm.

In June 1994, Smith borrowed \$28,000 through Gold Country and executed a \$28,000 note and deed of trust on a Cali-

ifornia property. That same day Smith also executed a cross-collateral installment note to Gold Country for \$43,000 at 12% interest and a cross-collateral deed of trust recorded against real property Smith owned in Oregon as additional security.

The bankruptcy court found that Gold Country violated 15 U.S.C. § 1638(a)(3) & (4), when, acting as a debtor, it failed to conspicuously disclose and define the "finance charge" and "annual percentage rate" (designated as such) in any of the documents executed in the June 1994 transaction. The court found that these violations subjected Gold Country to civil liability. However, the court also found that while Smith was entitled to \$1000 in statutory damages, the maximum allowed by statute at that time, 15 U.S.C. § 1640(a)(2)(A), she failed to show, and was therefore not entitled to, any actual damages under 15 U.S.C. § 1640(a)(1).¹

The BAP agreed, holding that where "a debtor cannot establish that he or she would have either gotten a better interest rate or foregone the loan completely, then no actual loss is suffered." Because Smith failed to prove detrimental reliance on the financing terms offered by the creditor, the BAP affirmed the bankruptcy court's denial of her claim for actual damages.

[1] The bankruptcy court and the BAP relied on cases from other circuits holding that such detrimental reliance must be shown in order to receive an award for actual damages. Circuit courts that have decided the issue have held that detrimental reliance is an element of a TILA claim for actual damages. *See, e.g., Turner v. Beneficial Corp.*, 242 F.3d 1023,

¹"Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part . . . with respect to any person is liable to such person in an amount equal to . . . (1) any actual damage sustained by such person as a result of the failure; . . ." 15 U.S.C. § 1640 (a)(1).

1028 (11th Cir. 2001) (*en banc*); *Perrone v. General Motors Acceptance Corp.*, 232 F.3d 433, 436-40 (5th Cir. 2000); *Stout v. J.D. Byrider*, 228 F.3d 709, 718 (6th Cir. 2000); *Peters v. Jim Lupient Oldsmobile, Co.*, 220 F.3d 915, 917 (8th Cir. 2000).

[2] We join with other circuits and hold that in order to receive actual damages for a TILA violation, *i.e.*, “an amount awarded to a complainant to compensate for a *proven* injury or loss,” Black’s Law Dictionary 394 (7th ed. 1999) (emphasis added), a borrower must establish detrimental reliance. Without any evidence in the record to show that Smith would either have secured a better interest rate elsewhere, or foregone the loan completely, her argument must fail — she presents no proof of any detrimental reliance, *i.e.*, any actual damage. Accordingly, we affirm the judgment of the BAP denying Smith’s claim for actual damages.

AFFIRMED.

